



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.588 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No.1105 of 1998  
of the Chief Magistrate's Court at Thika)**

**JOHN WANYOIKE NDUNGU.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant now admits that he robbed the complainant as charged but has asked for the substitution of the conviction for Robbery, contrary to section 296(1), P.C. The evidence was that the appellant robbed the complainant of a battery worth Sh.1,500/=. In his effort to escape the appellant stabbed the complainant (a watchman) on his shoulder. The complainant screamed and the members of the public helped in the arrest of the appellant. The battery was recovered. The complainant's injury was classified as harm.

Having evaluated the evidence we find that this robbery not being of a very serious type the request for the substitution of the conviction be granted. The learned lady state counsel M/S Ambasi is equally in favour of it. The appellant was in remand for about 14 months. He had one previous conviction for house breaking and theft for which he was placed on probation. There is no remission for robbery sentence.

**ORDER:**

We substitute the conviction for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to four years imprisonment with effect from 3rd June, 1999 plus two strokes.

**Dated and delivered at Nairobi this 31st day of October, 2001.**

**G.P. MBITO**

**JUDGE**

**V.V. PATEL**

**JUDGE**

